(1)

Supreme Court, U.S.

98 726 NOV 3 - 1998

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Docket Number _____

In The

**SUPREME COURT OF THE UNITED STATES**

October Term 1998

In Re FRANK PAUL LUKACS,

*Petitioner*

**On Petition for Writ of Mandamus to the United States Court of Appeals for the Fourth Circuit**

# PETITION FOR WRIT OF MANDAMUS

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cc/ pp

**QUESTIONS PRESENTED FOR REVIEW**

I. Absent extraordinary circumstances, such as a demonstrated history of frivolous and vexatious litigation, or a failure to comply with sanctions imposed for such conduct, does a district court have the power to prevent a party from filing pleadings, motions, affidavits, or appeals authorized by the Federal Rules of Civil Procedure, or dismissing and refusing to consider filed and docketed pleadings, motions, affidavits, or appeals authorized by the FRCP?

II. Did the district court abuse its discretion in denying appellant's motion for a preliminary and permanent injunction on the United States federal government's Federal Equal Opportunity Recruitment Program (FEORP), which is the federal government's so called affirmative action program for minorities and females and hispanics, without ever conducting the appropriate inquiry and analysis and review of the factors regarding motions for injunctive relief of *Blackwelder Furniture Co. v. Seilig Manufacturing Co., Inc.*, 550 F.2d 189, 195-96 (4th Cir. 1977), as required in the Fourth Circuit, and without complying with the Federal Rules of Civil Procedure Rule 52(a) which specifically states that "and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action".

**LIST OF ALL PARTIES TO THE PROCEEDING**

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v.

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## TABLE OF CONTENTS


| | PAGE |
|---|---|
| QUESTIONS PRESENTED FOR REVIEW ..... | i |
| PARTIES TO PROCEEDING ..... | ii |
| TABLE OF CONTENTS ..... | vi |
| TABLE OF CITED AUTHORITIES ..... | vii |
| CITATIONS OF THE REPORTS ..... | 1 |
| BASIS FOR JURISDICTION ..... | 1 |
| CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE ..... | 1 |
| STATEMENT OF THE CASE ..... | 2 |
| REASONS FOR ALLOWANCE OF THE WRIT ..... | 14 |
| CONCLUSION ..... | 28 |
| APPENDIX A ..... | A1 |
| APPENDIX B ..... | B1 |
| APPENDIX C ..... | C1 |
| APPENDIX D ..... | D1 |

**TABLE OF CITED AUTHORITIES**

*Case Citations* ..... Page Number

*Abdullah v. Gatto*, 773 F.2d 487, at 488 (2d Cir. 1985). ..... 29

*Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097 at 2144, 132 L.Ed.2d 158, 63 USLW 4523, (U.S.Colo., Jun 12, 1995). ..... 5

*Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 195-196 (4th Cir. 1977). ..... 8, 13

*Bounds v. Smith*, 430 U.S. 817, at 821, 97 S. Ct. 1491, at 1994, 52 L.Ed. 2d 72 (1977). ..... 18, 29

*Bounds v. Smith*, 430 U.S. 817, at 822, 97 S. Ct. 1491, at 1995, 52 L.Ed. 2d 72 (1977). ..... 18, 29

*Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)..... 10

*Connor v. Coleman*, 440 U.S. 612, 624 99 S. Ct. 1523, 59 L. Ed. 2d 619 (1979). ..... 17

*In re Green*, 669 F. 2d 779, at 786, (D.C.Cir. 1981). ..... 29

*Hanes Cos. v. Ronson*, 712 F. Supp. 1223, 1230 (M.D.N.C. 1988). ..... 6

*Herr, Haydock & Stempel, Motion Practice*, § 16.1.11 at 443 (2d ed. 1991). ..... 22

*In re Halliburton Co.*, 991 F.2d 810, 1993 WL 118929, (Fed.Cir.(Tex.), March 12, 1993). ..... 26

*In re Martin-Trigona*, 737 F.2d 1254, 1261-1262 (2d Cir. 1984). ..... 28

*Johl v. Johl*, 788 F.2d 75 (2d Cir. 1986). ..... 28

*Lodge Hall Music, Inc., v. Waco Wrangler Club, Inc.*, 831 F.2d 77 (5th Cir. 1987). ..... 24

*MacDraw, Inc. v. CIT Group Equipment Financing, Inc.*, 73 F.3d 1253, 1256 (2nd Cir.(N.Y.) 1996). ..... 27

*Milltex Industries Corp. v. Jacquard Lace Co., Ltd.*, 55 F.3d 34, at 39 (2nd Cir.(N.Y.) 1995). ..... 27

*Moore's Federal Practice, Federal Civil Rules*

*1997*, by James Moore, published by Matthew Bender & Company, New York, page 102, §7.3. ..... 28

*Moore's Federal Practice, Federal Civil Rules 1997*, by James Moore, published by Matthew Bender & Company, New York, page 617, §56.3 [6] Piercing the Pleadings; Effect of Verified and Unverified Pleadings. ..... 24

*Moore's Federal Practice, Federal Civil Rules 1997*, by James Moore, published by Matthew Bender & Company, New York, page 620, §56.3 [8] Notice; Time for Serving Affidavits. ..... 25

8 *Moore's Federal Practice*, § 42.10 [1] [c] [iv] (Matthew Bender 3d ed. 1997) under section entitled "Multiple Filings by One Plaintiff May be Consolidated". ..... 7

11 *Moore's Federal Practice*, § 56.30 [8] [a] [i] (Matthew Bender 3d ed. 1997) under section entitled "[a] Because Pleadings Determine Relevance and Materiality in Litigation, Content of Pleadings and Conformity of Pleadings with Federal Rules of Civil Procedure May Influence Summary Judgment Decisions [i] Pleadings Frame Dispute and Consequently Affect Materiality". ..... 22

11 *Moore's Federal Practice*, § 56.30 [8] [a]

[iii] (Matthew Bender 3d ed. 1997) under section entitled "[a] Because Pleadings Determine Relevance and Materiality in Litigation, Content of Pleadings and Conformity of Pleadings with Federal Rules of Civil Procedure May Influence Summary Judgment Decisions [iii] Motions to Amend Pleadings May Narrow or Broaden Factual and Legal Questions and Can Therefore Affect Summary Judgment".. ..... 23

22 *Moore's Federal Practice*, § 520.02 [2] (Matthew Bender 3d ed. 1997). ..... 17

22 *Moore's Federal Practice*, § 520.02 [3] (Matthew Bender 3d ed. 1997). .....18

*Moy v. United States*, 906 F. 2d 467, at 470 (9th Cir. 1990). ..... 29

*Procup v. Strickland*, 792 F.2d 1069, at 1078 (11th Cir. 1986) (en banc, per curiam). ... 29

*Richardson Greenshields Securities Inc. v. Lau*, 825 F.2d 647, at 652 (2d Cir. 1987). ..... 25, 26, 27, 28, 29

*Schoenberg v. Shaposlky Publishers, Inc.*, 971 F.2d 926, 936 (2nd Cir.(N.Y.) 1992). ..... 27

*Sheinkopf v. Stone*, 927 F.2d 1259 (1st Cir. 1991). ..... 24

*Will v. United States*, 389 U.S. 90, 95, 88 S. Ct. 269, 19 L. Ed. 2d 305 (1967). ..... 18

Fourteenth Amendment Equal Protection Clause of the United States Constitution ..... 5, 14

Fifth Amendment Due Process Clause of the United States Constitution ..... 5, 14

42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964 ..... 14

5 U.S.C. §7201 (a) ..... 4

5 U.S.C. §7201 (c) ..... 4

5 U.S.C. §7201 (d) ..... 4

5 C.F.R. §720.202 (a) ..... 4

5 C.F.R. §720.202 (e) ..... 4

5 C.F.R. §720.205 (c) ..... 4

Attachment 1 to FPM Letter 720-2, Office of Personnel Management (OPM), Federal Personnel Manual (FPM) ..... 4

Department of Health and Human Services (DHHS) Career Opportunity Training Agreement (COTA) ..... 4

29 C.F.R. 1614.108 Investigation of Complaints
..... 2

## CITATIONS OF THE REPORTS

The judgment of the Fourth Circuit Court of Appeals, In Re Frank Lukacs, Petitioner, No. 98-1490, CA-96-2913-PJM, (4th Cir. May 27, 1998) is attached as Appendix A.

## BASIS FOR JURISDICTION

Petitioner appeals from the Fourth Circuit Court of Appeals judgment entered in Case Number 98-1490 on May 27, 1998 (Appendix A). Petitioner's Petition for Rehearing in Case Number 98-1490 was denied by the Fourth Circuit Court of Appeals on August 10, 1998 (Appendix B).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 and § 1651.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE

The citations of the relevant Constitutional provisions, statutes, and regulations involved in the case follow, with their pertinent text set out verbatim in the appendix (Appendix C).

Fourteenth Amendment Equal Protection Clause of the United States Constitution

Fifth Amendment Due Process Clause of the United States Constitution

42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964

5 U.S.C. §7201 (a), 5 U.S.C. §7201 (c), 5 U.S.C. §7201 (d)

5 C.F.R. §720.202 (a), 5 C.F.R. §720.202

(e), 5 C.F.R. §720.205 (c)

Attachment 1 to FPM Letter 720-2, Office of Personnel Management (OPM), Federal Personnel Manual (FPM)

Department of Health and Human Services (DHHS) Career Opportunity Training Agreement (COTA)

## STATEMENT OF THE CASE

Petitioner from the date of his first Equal Employment Opportunity ("EEO") complaint at the National Institutes of Health ("NIH") in January of 1991, despite his having applied on an average of about once every month for advertised job vacancy announcements, and having timely filed over sixty separate EEO complaints "within 45 days of the date of the matter alleged to be discriminatory" as per 29 C.F.R. § 1614, on about fifty of which EEO complaints there was never any of the 29 C.F.R. § 1614 mandatory processing and investigation by the agency, has never once in all this time ever been selected for a so called affirmative action designated or Federal Equal Opportunity Recruitment Program ("FEORP") designated or Affirmative Employment Program ("AEP") designated opening, which are in effect set aside for minorities and women and hispanics, at the NIH, at DHHS, or anywhere else in the entire United States federal government.

Petitioner is a member of a protected group, since petitioner is a white male.

Petitioner has applied for numerous job vacancy announcements and benefits. Petitioner was qualified for these numerous job vacancy announcements and benefits. Petitioner was rejected for these numerous job vacancy announcements and benefits. These positions or benefits either remained open and the employer continued to seek applicants, or else the positions or benefits were given to members outside of the protected group of white males. Petitioner was rejected for these positions under circumstances giving rise to an inference of unlawful discrimination, especially all of the circumstances and countless elements of so called affirmative action, FEORP, and AEP.

Defendants have not articulated any, much less any legitimate, nondiscriminatory reason for most of the employment actions or denial of benefits. In those few cases where Defendants have articulated reasons for the employment actions or denial of benefits, defendants' reasons were a mere pretext for discrimination or simply not credible.

Petitioner maintains that because he is a caucasian male, and is over forty years of age and is a first generation legal immigrant of Hungarian ancestry, his career in the federal government has been limited to a few job series which are non-FEORP designated and non-AEP designated positions and that he has been forced to follow a career path that is outside of the "mainstream occupations", or

highly populous occupations which tend to lead to higher level positions in the agency.

The statutes of 5 U.S.C. §7201 (a), 5 U.S.C. §7201 (c), 5 U.S.C. §7201 (d), the regulations of 5 C.F.R. §720, including but not limited to, elements of 5 C.F.R. §720.202 (e), especially those referring to qualifiable minorities and women, elements of 5 C.F.R. §720.202 (a), especially those referring to women, and elements of 5 C.F.R. §720.205 (a) and 5 C.F.R. §720.205 (e), especially those referring to the appropriate labor force, the FEORP regulations on underrepresentation and classifications on the basis of race and gender, the United States Equal Employment Opportunity Commission's "Instructions for the Development and Submission of Federal Affirmative Employment Multi-Year Program Plans, Annual Accomplishment Reports, and Annual Plan Updates", Executive Order 11478 as amended by Executive Order 12106 which established requirements for federal agency Affirmative Employment Programs, the Office of Personnel Management classification of minorities by race and national origin under the FEORP, Attachment 1 to FPM Letter 720-2, the FEORP rules and guidelines, the AEP rules and guidelines, and the Career Opportunities Training Program (COTA) all employ racial classifications and gender classifications and national origin classifications. Consequently, the above described laws, regulations, rules, guidelines, and programs

employing racial classifications and gender classifications and national origin classifications must be analyzed by this federal court under strict scrutiny. Such laws, regulations, rules, guidelines, and programs are constitutional "only if they are narrowly tailored measures that further compelling governmental interests." Because these laws, regulations, rules, guidelines, and programs for affirmative action employ racial classifications and gender classifications and national origin classifications which when subjected to and analyzed under strict scrutiny are not narrowly tailored measures that further compelling government interests, they violate the Fourteenth Amendment Equal Protection Clause of the United States Constitution and the Fifth Amendment Due Process Clause of the United States Constitution. "Accordingly, we hold today that all racial classifications, imposed by whatever federal, state, or local government actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097 at 2144, 132 L.Ed.2d 158, 63 USLW 4523, (U.S.Colo., Jun 12, 1995).

[Unfortunately, the filing of equal employment opportunity complaints of

discrimination challenging the legality and constitutionality of such discrimination resulted in numerous instances of retaliation, reprisal, harassment, the creation of a hostile working environment, and as everyone had warned Petitioner aforehand, the eventual constructive discharge of Petitioner. To meet the deadlines imposed by 29 C.F.R. § 1614 "to file a civil action in an appropriate United States District Court" "Within 90 days of receipt of the final decision", Petitioner filed several federal court civil suits. Since these were "actions involving a common question of law or fact pending before the court", in the interests of justice, for expeditious results, for the conservation of resources, and for avoiding inconsistent results, the separately filed cases should have been consolidated.

"A common factual issue, such as two lawsuits pending in the same court and brought by the same plaintiff, is a sufficient basis for consolidation if combining the two cases will simplify the litigation process. Especially if the alternative (to dismiss the second lawsuit and require the plaintiff to amend its first complaint to add the dismissed allegations) would be a complicated exercise of form over substance, consolidation is generally preferred. *Hanes Cos. v. Ronson*, 712 F. Supp. 1223, 1230 (M.D.N.C. 1988) (court found consolidation of two cases filed by same plaintiff "enhanced efficiency and economy for

all concerned")." 8 *Moore's Federal Practice*, § 42.10 [1] [c] [iv] (Matthew Bender 3d ed. 1997) under section entitled "Multiple Filings by One Plaintiff May be Consolidated".

Here the court has gone even one step further, for contrary to the clear holding of the above case, the Court has dismissed the second complaint and rather than "require the plaintiff to amend its first complaint to add the dismissed allegations" this Court has simply "denied plaintiff even the opportunity to amend the first complaint to add the dismissed allegations", especially since Defendants had not submitted a "responsive pleading" and Petitioner had a right to amend the pleading "once as a matter of course at any time before a responsive pleading is served" as per Federal Rules of Civil Procedure Rule 15 (a) Amendments.]

Petitioner filed a motion for partial summary judgment, or in the alternative for declarative relief, or in the alternative for injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure, on the finding and conclusion that a) no compelling governmental interest exists which constitutionally protects or permits continuation of the federal government Federal Equal Opportunity Recruitment Program (FEORP) and b) that the means employed by FEORP are not narrowly tailored measures.

The United States Court of Appeals for the Fourth Circuit stated that "We find that

the district court did not abuse its discretion in dismissing Petitioner's Motion for Injunctive Relief. See *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 195-196 (4th Cir. 1977). Accordingly we affirm the denial of injunctive relief."

However, the district court never addressed any of the required *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 195-196 (4th Cir. 1977) factors, or any factors for that matter, and violated Federal Rules of Civil Procedure Rule 52(a) which specifically states that "in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action".

The opinion was in conflict with other decisions of other courts of appeal. Petitioner timely filed a writ of certiorari to the Supreme Court on June 06, 1998. Petitioner's petition for a writ of certiorari to the Supreme Court of the United States was denied on October 05, 1998.

The district court on June 30, 1997 had ordered "the parties are directed to file no further motions", [then after Defendants through the Department of Justice on September 01, 1998 violated the order to file no further motions by actually filing a motion, which motion by the way was even granted by the district court, the district court on September 08, 1998 ordered that "neither party

shall file further pleadings in this Court", and on October 13, 1998 ordered that "The Clerk of the Court will be directed to not docket any more pleadings"].

Petitioner on April 03, 1998 filed a petition for a writ of mandamus. In the words of the Fourth Circuit of Appeals "Appellant appeals the district court's orders" ... "(2)" ... "directing that all parties file no further motions", with the specific language of the order being that "the parties are directed to file no further motions".

The opinion denying the petition for a writ of mandamus states that "Lukacs raised these issues on appeal and this Court denied relief. See *Lukacs v. Shalala*, No. 97-2047 (4th Cir. Jan. 26 1998) (unpublished)." However, contrary to the somewhat carefully chosen wording of the statement that "this Court denied relief" in 97-2047, intimating that the Court of Appeals had fully considered Appellant's appeal regarding the order "directing that all parties file no further motions", the material fact overlooked in the decision is that the only thing that the Court of Appeals was willing to even consider in 97-2047 was "the denial of injunctive relief" "against the federal government's affirmative action program". The district court's order "directing that all parties file no further motions" received the following from the Court of Appeals in 97-2047 "We dismiss the appeal of the remaining orders for lack of

jurisdiction because the orders are not appealable." The Court of Appeals went on to state that "This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (1994), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (1994); Fed. R. Civ. P. 54 (b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949). The orders here appealed are neither final orders nor appealable interlocutory or collateral orders." Thus the Court of Appeals in 97-2047 in effect simply refused to even make a decision on the district court's order "directing that all parties file no further motions", which is precisely why Appellant was forced to file his separate petition for a writ of mandamus.

The reality of the matter is that, according to the results of Petitioner's computer legal database search, every Court of Appeals to have thus far considered the issue, and there are over two hundred such cases, has reaffirmed that **absent extraordinary circumstances a court has no power to prevent a party from filing pleadings, motions, affidavits, or appeals authorized by the FRCP**, and has therefore ordered that parties be permitted to file pleadings, motions, and appeals authorized by the FRCP, absent extraordinary circumstances, (which no one to date, not even the district court judge who initially signed the orders in question, has even remotely intimated that such

extraordinary circumstances are even anywhere near the case here).

In fact the Court of Appeals for the Fourth Circuit in its very decision trying to justify its judgment, by its very silence on the topic, and even with more legal knowledge and expertise and capability at doing computer legal database searches, apparently could not find even one appellate court decision which did not come to the conclusion that **absent extraordinary circumstances a court has no power to prevent a party from filing pleadings, motions, affidavits, or appeals authorized by the FRCP**.

The only thing that the Court of Appeals for the Fourth Circuit was able to come up with was that "In this mandamus petition, Lukacs failed to establish that he has a **clear right** to the relief sought and that no other remedy is adequate." But the reality of the matter is that every other Court of Appeals starts off with the basic proposition that all parties have a **clear right** to the filing of all pleadings, motions, affidavits, and appeals authorized by the FRCP, and that absent extraordinary circumstances a court has no power to prevent a party from filing pleadings, motions, affidavits, or appeals authorized by the FRCP. Since there are no substitutes for pleadings, motions, affidavits, or appeals authorized by the FRCP within the U S district courts, and since the U S district courts themselves have a monopoly

on the federal judicial system, the reality of the matter is that no other remedy is anywhere near or even remotely close to being adequate.

The Court of Appeals in its reticence at granting a writ of mandamus, especially for an Appellant who is after all Pro Se, states that "Further, mandamus may not be used as a substitute for appeal." However, as the Court of Appeals itself states, Appellant at first tried an appeal, in that "Lukacs raised these issues on appeal", but unfortunately the end result of trying that route was that "this Court denied relief", by dismissing "the appeal of the remaining orders for lack of jurisdiction because the orders are not appealable", and the only thing that the Court of Appeals was willing to even consider in 97-2047 was "the denial of injunctive relief" "against the federal government's affirmative action program".

If reference is being made to an "appeal" of "final decisions of district courts" under 28 U.S.C. § 1291, Appellant would merely like to point out that none of the over two hundred cases of other Courts of Appeals felt that the Appellants had to await a final decision of a district court when these Appellants filed petitions for a writ of mandamus when a district court judge tried to prevent them from filing pleadings, motions, affidavits, or appeals authorized by the FRCP.

Besides, the way that Appellant categorizes the issues, there are really

basically only two broad categories presently up on appeal. The first broad category concerns injunctions, namely appeals under 28 U.S.C. § 1292, under which the Court of Appeals admitted it had immediate jurisdiction on "Appellant's Motion for Injunctive Relief" "against the federal government's affirmative action program". Under this category of injunctions is subsumed the Court of Appeals wording "(3) to reevaluate his motion for injunctive relief in light of the factors enumerated in *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 195-96 (4th Cir. 1977); (4) to specify the court's reasons for denying his motion for injunctive relief; and (5) to grant his motion for permanent injunction against the federal government's affirmative action program." The second broad category contains the order "directing that all parties file no further motions". Just because the Court of Appeals might be of the opinion that Appellant has perhaps asked for too much in his writ of mandamus at present is no reason not to grant Appellant any of his requested relief.

With this in mind, Appellant will limit the rest of his remarks to what the Court of Appeals has categorized as issue number two, namely "Frank Paul Lukacs filed a petition for a writ of mandamus requesting that this court order the district court ... (2) to permit Lukacs to file pleadings, motions, affidavits, and appeals." Actually even the wording of

this is somewhat backwards, for Appellant maintains that he has a "**clear right** to file pleadings, motions, affidavits, and appeals", and that "**absent extraordinary circumstances a court has no power to prevent a party from filing pleadings, motions, affidavits, or appeals authorized by the FRCP**", and therefore that he should not be having to ask permission to do that which he has a clear right to do, and that which he is being prevented from doing by someone who does not have the authority to do so.

Since a review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance was initially stated as "Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and §1343. Authority for this Complaint is provided in the Fourteenth Amendment Equal Protection Clause of the United States Constitution, by the Fifth Amendment Due Process Clause of the United States Constitution, by 42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964, and under 29 U.S.C. §621, et seq."

## REASONS FOR ALLOWANCE OF THE WRIT

## ABSENT EXTRAORDINARY CIRCUMSTANCES A COURT HAS NO POWER TO PREVENT A PARTY FROM FILING PLEADINGS, MOTIONS, AFFIDAVITS, OR APPEALS AUTHORIZED BY THE FEDERAL RULES OF CIVIL PROCEDURE

The United States Court of Appeals for the Fourth Circuit has entered a decision in conflict with the decision of another United States court of appeals on the same important matter when the Court of Appeals for the Fourth Circuit did not issue an order directing the district court to allow the filing of all pleadings, motions, affidavits, and appeals authorized by the Federal Rules of Civil Procedure.

The United States Court of Appeals for the Fourth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's supervisory power when it did not issue an order directing the district court to allow Petitioner the filing of all pleadings, motions, affidavits, and appeals authorized by the Federal Rules of Civil Procedure, and when it did not issue an order directing that the district court comply with "Federal Rules of Civil Procedure Rule 15 which states that "(a) Amendments. **A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served** or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of

court or by written consent of the adverse party; and **leave shall be freely given when justice so requires.**"

The United States Court of Appeals for the Fourth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's supervisory power when it did not issue an order directing that the district court comply with the Federal Rules of Civil Procedure Rule 42(a) (or at the least permit the filing of a motion under FRCP Rule 42(a)) which specifically states that "Consolidation. **When actions involving a common question of law or fact are pending before the court**, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay"; and when it did not issue an order directing that the district court comply with the Federal Rules of Civil Procedure Rule 56(c) which specifically states that "(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits."; and when it did not issue an order directing that the district court comply with the Federal Rules of Civil Procedure Rule

6 (d), (or at the least permit the filing of a motion under FRCP Rule 6 (d)) which states that "opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time"; and when it did not issue an order directing that the district court comply with the Federal Rules of Civil Procedure Rule 52 (a) which specifically states that "and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action".

The writ will be in aid of the Court's appellate jurisdiction for "the Court has a continuing power to issue extraordinary writs in aid of either its original jurisdiction, or its appellate jurisdiction, including as a part of those jurisdictions the exercise of its general supervisory control over the federal court system. General supervisory control. See, e.g., *Connor v. Coleman*, 440 U.S. 612, 624 99 S. Ct. 1523, 59 L. Ed. 2d 619 (1979) ("When a lower federal court refuses to give effect to, or misconstrues our mandate, its action may be controlled by this court...")". 22 *Moore's Federal Practice*, § 520.02 [2] (Matthew Bender 3d ed. 1997). The reality of the matter is that at present prisoners have more rights to file pleadings and motions and affidavits and appeals than does petitioner pro se. **Petitioner has in effect had his "constitutional right of access**

**to the courts", (*Bounds v. Smith*, 430 U.S. 817, 821, 97 S. Ct. 1491, 1994, 52 L.Ed. 2d 72 (1977)) and "his right to adequate, effective, and meaningful access", (*Bounds*, 430 at 822, 97 S.Ct. at 1495) to the courts curtailed and abridged.**

""Exceptional circumstances warrant the exercise of the Court's discretionary powers" [since the issue presented is one of] "exceptional circumstances amounting to a judicial "usurpation of power" [to] justify the invocation of this extraordinary remedy" *Will v. United States*, 389 U.S. 90, 95, 88 S. Ct. 269, 19 L. Ed. 2d 305 (1967) [and] "appeal is a clearly inadequate remedy" *Ex parte Fahey*, 332 U.S. 258, 260, 67 S. Ct. 1558, 91 L. Ed. 2041 (1947)." 22 *Moore's Federal Practice*, § 520.02 [3] (Matthew Bender 3d ed. 1997).

Relief is sought against the orders of the United States District Court Judge Peter Messitte. Adequate relief cannot be obtained in any other form or from any other court, for petitioner has already tried an appeal to the Fourth Circuit Court of Appeals (as *Lukacs v. Shalala*, No. 97-2047 (4th Cir. Jan 26, 1998)) and petitioner has already tried an appeal of that decision via a petition for a writ of certiorari to the Supreme Court of the United States (as Lukacs v. Shalala, No. 98-48).

Besides, although the procedure is on a petition for an extraordinary writ, the real issue is a very simple and basic and ordinary

one, and every other Court of Appeals to have previously decided the issue on a petition for an extraordinary writ no less, has ruled that **"Absent extraordinary circumstances, such as a demonstrated history of frivolous and vexatious litigation, or a failure to comply with sanctions imposed for such conduct, a court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the FRCP"**.

The reality of the matter is that the issues presented by petitioner regarding the legality and constitutionality of the so called FEORP and AEP affirmative action programs for minorities and females and hispanics, and the corresponding negative action programs against white males, are not only legal ones but are also political issues presently dividing this nation, and even the Supreme Court itself. Thus it is only natural for a district court judge appointed by President Clinton, the most vocal supporter of these discriminatory action programs for minorities and females and hispanics, simply because it is in his political interests to side with the numerical majority of voters, to do everything procedurally, which misuse of procedure the district court judge has been employing via repeated sua sponte orders which even the Department of Justice (DOJ) has not dared even suggest much less request, especially since petitioner has merely been following the specific directions and

instructions of none other than Defendants regarding the substance of the district court judge's sua sponte orders, to make sure that petitioner loses and that Defendants win. Unfortunately, this is petitioner pro se's first federal court complaint. Although readily admitting that he is legally inexperienced for the task at hand to the point at times of sheer incompetence, petitioner pro se has been able to keep up with the DOJ, and in fact file motions for default judgment in four civil actions, and in fact it is the district court judge who is complaining on behalf of the DOJ that petitioner is "bombarding the Government with paper", even though it was none other than Defendants who repeatedly threatened and intimidated plaintiff that if he ever filed a federal court complaint that Defendants would "bury plaintiff with paperwork" and that plaintiff "would be so busy responding to motions and memorandum" that plaintiff would not know whether he was coming or going. However, petitioner pro se when pitted against the district court judge who is supposed to be detached and impartial but who has basically taken over the representation of the case for the Defendants, simply needs at the minimum to be able to file pleadings and motions and affidavits and appeals to defend himself, and establish the record for appeal, which this district court judge has simply refused for those very reasons to allow petitioner. The

reality of the matter is that the district court judge refused to even allow petitioner to file much less seriously consider his motion to consolidate his five federal court civil actions "involving a common question of law or fact pending before the court", or for petitioner "to amend the party's pleading once as a matter of course at any time before a responsive pleading is served" without a motion to amend, which motion of course petitioner was not permitted to file, or to file a motion for a preliminary injunction on the National Institutes of Health so called FEORP and AEP affirmative action programs for minorities and females, regarding which motions even if filed and docketed, in the words of the district court judge as late as October 13, 1998 "The Court will not consider these motions".

"The movant's ability to obtain summary judgment will, however, vary according to the pleadings. Most obviously, a multiple count complaint makes it empirically less likely that a movant can obtain summary judgment as to the entire case. In addition, a variety of claims makes a wider variety of information relevant to the disposition of the matter. As more information is relevant, a movant needs to do more to negate the possibility of a reasonable jury verdict in claimant's favor, making it harder for a movant to sustain its burden of showing entitlement to summary judgment, at least for the case as a whole.

This phenomenon explains the historical reluctance of courts to grant summary judgment in large and complex cases, even though the summary judgment standard applicable is the same as that in ordinary litigation. [FN109] [FN109: Wider range of facts or competing inferences at issue makes summary judgment more difficult in large cases although same standards apply. See *Herr, Haydock & Stempel, Motion Practice*, § 16.1.11 at 443 (2d ed. 1991) (because large cases involve more sources of information, they present greater potential for factual disputes that may preclude summary judgment).] Moreover, in a case involving more claims, respondent has more opportunity to feret out and focus on disputed factual matters that prevent resolution of the claim in the movant's favor. The claims and defenses at issue also determine what constitutes relevant evidence supporting or opposing summary judgment." 11 *Moore's Federal Practice*, § 56.30 [8] [a] [i] (Matthew Bender 3d ed. 1997) under section entitled "[a] Because Pleadings Determine Relevance and Materiality in Litigation, Content of Pleadings and Conformity of Pleadings with Federal Rules of Civil Procedure May Influence Summary Judgment Decisions [i] Pleadings Frame Dispute and Consequently Affect Materiality".

"Because the volume and nature of claims pleaded can affect summary judgment, a party seeking to avoid summary judgment may profit

from amending its complaint to allege additional or different matter." 11 *Moore's Federal Practice*, § 56.30 [8] [a] [iii] (Matthew Bender 3d ed. 1997) under section entitled "[a] Because Pleadings Determine Relevance and Materiality in Litigation, Content of Pleadings and Conformity of Pleadings with Federal Rules of Civil Procedure May Influence Summary Judgment Decisions [iii] Motions to Amend Pleadings May Narrow or Broaden Factual and Legal Questions and Can Therefore Affect Summary Judgment". Petitioner's original unverified pleading only recited the facts of a half dozen of petitioner's individual equal employment opportunity complaints. Petitioner's proposed amended verified complaint recites the facts of about four dozen of petitioner's individual equal employment opportunity complaints, and contains additional claims, including rather reluctantly a claim for a be fired or quit constructive discharge. However, if a Court simply refuses to even allow petitioner to file or to have docketed or to consider an amended complaint under an order which specifically threatens petitioner with sanctions, then petitioner is deprived of a meaningful opportunity and an effective means of the pleadings determining the relevance and materiality in litigation, for the contents of the pleadings to influence summary judgment decisions, and for the amended pleadings to

broaden the factual and legal questions which can affect summary judgment, which may unfortunately be the real intent behind the order in the first place.

Verified pleadings "may properly be considered as equivalent to a supporting or opposing affidavit, as the case may be. *Sheinkopf v. Stone*, 927 F.2d 1259 (1st Cir. 1991) (verified complaint treated as equivalent of an affidavit on a motion for summary judgment; conclusory allegations would be ignored on summary judgment, but factual averments could be considered; complaint could be considered to the extent that it complied with the standards of Rule 56(e).) See also *Lodge Hall Music, Inc., v. Waco Wrangler Club, Inc.*, 831 F.2d 77 (5th Cir. 1987)." *Moore's Federal Practice, Federal Civil Rules 1997*, by James Moore, published by Matthew Bender & Company, New York, page 617, §56.3 [6] Piercing the Pleadings; Effect of Verified and Unverified Pleadings. However, if a Court simply refuses to even allow petitioner to file or have docketed a verified complaint under an order which specifically threatens petitioner with sanctions, then petitioner is deprived of a meaningful opportunity and an effective means for an "equivalent to a supporting or opposing affidavit", which may unfortunately be the real intent behind the order in the first place.

"If a party seeking summary judgment desires to use supporting affidavits, they

should be served with the motion. And Rule 56(c) states that "[t]he adverse party prior to the day of hearing may serve opposing affidavits". This should be read in conjunction with Rule 6(d) which vests in the court the power to permit opposing affidavits "to be served at some other time"." *Moore's Federal Practice, Federal Civil Rules 1997*, by James Moore, published by Matthew Bender & Company, New York, page 620, §56.3 [8] Notice; Time for Serving Affidavits. However, if a Court simply refuses to even allow petitioner to file or have docketed a motion for leave to permit opposing affidavits "to be served at some other time" under an order which specifically threatens petitioner with sanctions, then petitioner is deprived of a meaningful opportunity and an effective means to "serve opposing affidavits", which may unfortunately be the real intent behind the order in the first place.

**"Absent extraordinary circumstances ... a court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure." *Richardson Greenshields Securities Inc. v. Lau*, 825 F.2d 647, at 652 (2d Cir. 1987).**

A quick check in Westlaw will confirm that the above quotation from the Second Circuit Court of Appeals, thereby satisfying the situation that "the opinion is in conflict with another decision of another court of

appeals", has been quoted and cited in over 200 cases.

As an example, the first of over 200 citations in Westlaw regarding the above quote is from the United States Court of Appeals for the Federal Circuit decision in *In re Halliburton Co.*, 991 F.2d 810, 1993 WL 118929, (Fed.Cir.(Tex.), March 12, 1993), in which the district court, (very similar to the case before us), "ordered that: no party in this case file anything further before this Court" ... "the filing of anything further in this Court, in the absence of the exhaustion of such appellate scrutiny, will constitute an act of contempt, for which appropriate sanctions will issue." The United States Court of Appeals for the Federal Circuit stated: "In *Richardson [Greenshields Securities, Inc., v. Lau*, 825 F.2d 647 (2d Cir. 1987)], the Second Circuit stated that absent extraordinary circumstances, "a [district] court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure." *Richardson*, 825 F.2d at 652. We are in agreement with this principle. Accordingly, it is ordered that: Halliburton's petition is granted. The District Court's order is vacated and the district court is directed to allow the filing of motions authorized by the Federal Rules of Civil Procedure." (See Appendix D for a copy of this rather short but very relevant

unpublished opinion.)

The following is a typical quotation from the over 200 Westlaw citations, being from *MacDraw, Inc. v. CIT Group Equipment Financing, Inc.*, 73 F.3d 1253, 1256 (2nd Cir.(N.Y.) 1996): "We have previously emphasized that a district court "has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure." *Richardson Greenshields Securities, Inc., v. Lau*, 825 F.2d 647, 652 (2d Cir. 1987)."

In *Milltex Industries Corp. v. Jacquard Lace Co., Ltd.*, 55 F.3d 34, at 39 (2nd Cir.(N.Y.) 1995) the appellate court stated: ""A court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure." *Richardson Greenshields Securities, Inc., v. Lau*, 825 F.2d 647, 652 (2d Cir. 1987). Although it is within the judge's discretion to hold a pre-motion conference for the purpose of persuading a party not to file a perceived meritless motion, see id. ("We do not suggest that district judges cannot require a conference prior to the filing of motions as a means of managing litigation assigned to them."), the judge may not require that the court's permission be secured at such a conference before a party may file the motion."

In *Schoenberg v. Shaposlky Publishers, Inc.*, 971 F.2d 926, 936 (2nd Cir.(N.Y.) 1992),

the appellate court stated: "As we explained in *Richardson Greenshields Securities, Inc., v. Lau*, 825 F.2d 647, 652 (2d Cir. 1987), "absent extraordinary circumstances ... a court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure". Whenever a court directs a lawyer that he or she may not make a motion, it is in effect cutting the lines of communication between the court and the litigants. This elimination of dialogue can result, as in the case here, in the multiplication of proceedings, especially when a party is seeking to raise a threshold issue."

"While a judge may require parties to confer before filing a motion, the judge may not, by failing to hold a conference, prevent parties from filing. *Richardson Greenshields Securities Inc. v. Lau*, 825 F.2d 647 (2d Cir. 1987)." *Moore's Federal Practice, Federal Civil Rules 1997*, by James Moore, published by Matthew Bender & Company, New York, page 102, §7.3.

**CONCLUSION**

**"Absent extraordinary circumstances, such as a demonstrated history of frivolous and vexatious litigation, see *In re Martin-Trigona*, 737 F.2d 1254, 1261-1262 (2d Cir. 1984), or a failure to comply with sanctions imposed for such conduct, *Johl v. Johl*, 788 F.2d 75 (2d Cir. 1986) (per curium), a court**

**has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure."** ***Richardson Greenshields Securities Inc. v. Lau,*** **825 F.2d 647, at 652 (2d Cir. 1987).**

Appellant has been in effect precluded from any meaningful action in the court proceedings or any meaningful **"access to the court system"**, *Moy v. United States*, 906 F. 2d 467, at 470 (9th Cir. 1990). Appellant has in effect had his **"constitutional right of access to the courts"**, (*Bounds v. Smith*, 430 U.S. 817, at 821, 97 S. Ct. 1491, at 1994, 52 L.Ed. 2d 72 (1977)) and **"his right to adequate, effective, and meaningful access"**, (*Bounds*, 430 at 822, 97 S.Ct. at 1495) to the courts curtailed and abridged. "It sanctions access restrictions that standing alone might or might not be objectionable but which **"taken together [are] so burdensome as to deny the litigant meaningful access to the courts"**, *In re Green*, 669 F. 2d 779, at 786, (D.C.Cir. 1981) (per curiam); *Abdullah v. Gatto*, 773 F.2d 487, at 488 (2d Cir. 1985) (per curiam)", *Procup v. Strickland*, 792 F.2d 1069, at 1078 (11th Cir. 1986) (en banc, per curiam).

Wherefore, Petitioner hereby respectfully makes an application to the court for an order granting Petitioner's petition for a writ of mandamus, and Petitioner hereby respectfully makes an application to the court for an order that the United States District Court for the Southern District of Maryland's orders of June 30, 1997, July 10, 1997, and July 23, 1997 be vacated, and Petitioner hereby respectfully makes an application to the court for an order that the district court be directed to allow the filing of pleadings, motions, affidavits, and appeals authorized by the Federal Rules of Civil Procedure.

Respectfully Submitted,

Frank Paul Lukacs

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Telephone # (703) 481-0825
Petitioner Pro Se

**APPENDIX A**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 98-1490

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In Re: FRANK PAUL LUKACS,
Petitioner.

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On Petition for Writ of Mandamus.
(CA-96-2913-PJM)

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Submitted: May 14, 1998
Decided: May 27, 1998

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Before WIDENER and MICHAEL, Circuit Judges, and BUTZNER, Senior Circuit Judge.

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Petition denied by unpublished per curiam opinion.

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Frank Paul Lukacs, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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PER CURIAM:

Frank Paul Lukacs filed a petition for a writ of mandamus requesting that this court order the district court: (1) to vacate three of its orders; (2) to permit Lukacs to file pleadings, motions, affidavits, and appeals; (3) to reevaluate his motion for injunctive relief in light of the factors enumerated in Blackwelder Furniture Co. v. Seilig Mfg. Co., 550 F.2d 189, 195-96 (4th Cir. 1977); (4) to specify the court's reasons for denying the motion for injunctive relief; and (5) to grant his motion for permanent injunction against the federal government's affirmation program. Lukacs raised these issues on appeal and this Court denied relief. See Lukacs v. Shalala, No. 97-2047 (4th Cir. Jan. 26, 1998) (unpublished). In this mandamus petition, Lukacs failed to establish that he has a clear right to the relief sought and that no other remedy is adequate. See In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Further, mandamus may not be used as a substitute for appeal. See In re United States Steelworkers, 595 F.2d 958, 960 (4th Cir. 1979). We therefore deny Lukacs's petition for a writ of mandamus. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED

**APPENDIX B**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Filed August 10, 1998
No. 98-1490
CA-96-2913-PJM

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In Re: FRANK PAUL LUKACS,
Petitioner.

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On Petition for Rehearing
with Suggestion for Rehearing In Banc

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Petitioner's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Patricia S. Connor

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CLERK

## APPENDIX C

## CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE

**Fourteenth Amendment Equal Protection Clause of the United States Constitution**

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

**Fifth Amendment Due Process Clause of the United States Constitution**

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy

of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

**42 U.S.C. §2000e, et seq. under Title VII of the Civil Rights Act of 1964**

42 U.S.C. §2000e-16 states that "All personnel actions affecting employees or applicants for employment ... shall be made free from any discrimination based on race, color, religion, sex, or national origin."

**5 U.S.C. §7201 (a), 5 U.S.C. §7201 (c), 5 U.S.C. §7201 (d)**

5 U.S.C. §7201 (a) states that "For the purpose of this section - (1) "underrepresentation" means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most

recent decennial or mid-decade census, or current population survey, under title 13".

5 U.S.C. §7201 (c) states that "the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable - (1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and (2) that the Office conduct a continuing program of (A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and (B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation."

5 U.S.C. §7201 (d) states that "the Equal Employment Opportunity Commission shall - (1) establish the guidelines proposed in carrying out the program required under subsection (c) of this section: and (2) make determinations of underrepresentation which are proposed to be used initially under such program; and (3)

transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection."

**5 C.F.R. §720.202 (a), 5 C.F.R. §720.202 (e), 5 C.F.R. §720.205 (c)**

5 C.F.R. §720.202 (a) states that "Underrepresentation means a situation in which the number of women or members of a minority group within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage of women or the minority constitutes within the civilian labor force of the United States, in accordance with section 720.205 (c) and (d)."

5 C.F.R. §720.202 (e) states that "Recruitment means the total process by which the Federal Government and the Federal agencies locate, identify, and assist in the employment of qualified applicants from underrepresented groups for job openings in categories of employment where underrepresentation has been determined. It includes both innovative internal and external recruitment actions. It is also intended to cover processes designed to prepare qualifiable applicants (those who have the potential but do not presently meet valid qualification requirements) for such job

openings through programs of training, work experience, or both."

CFR §720.205 (c) states that "Where an agency or agency component located in a geographical area where the percentage of underrepresented groups in the area civilian labor force is higher than their percentage in the national labor force, the agency or component must base its plans on the higher level of representation in the relevant civilian labor force."

**Attachment 1 to FPM Letter 720-2, Office of Personnel Management (OPM), Federal Personnel Manual (FPM)**

OPM Attachment 1 to FPM Letter 720-2 defines minorities as "intended to include only the following racial and ethnic categories: American Indian or Alaskan Indian, Asian or Pacific Islander, Black (not of hispanic origin), and Hispanic", in effect all descendants of peoples originating in the continents of North America, Asia, Africa, and South America, except of course descendants of peoples originating in the continent of Europe.

OPM Attachment 1 to FPM Letter 720-2 defines the basic racial and ethnic categories as follows: "(a) American Indian or Alaskan Native. A person having origins in any of the original peoples of North America, and who maintains cultural identification through

tribal affiliation or community recognition. (b) Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes for example, China, Japan, Korea, the Philippine Islands, and Samoa. (c) Black. A person having origins in any of the black racial groups of Africa. (d) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race."

OPM Attachment 1 to FPM Letter 720-2 further defines Hispanic origin by geographic regions of the United States such that "in the five Southwestern States (Arizona, California, Colorado, New Mexico, and Texas), the Hispanic population is identified as Spanish language or surname; in the Middle Atlantic States (New York, Jew Jersey, and Pennsylvania) as the population of Spanish language; and in the remaining 42 States and the District of Columbia, as the population of Spanish language".

OPM Attachment 1 to FPM Letter 720-2 states that "An underrepresentation determination is a comparison between (a) the percentage of a particular minority/sex in a category of Federal employment and (b) the percentage of that same group in the civilian labor force either nationally or locally." Furthermore, "agencies need to compare both

national and local", (State or standard metropolitan statistical area ("SMSA)), "civilian labor force data for each minority/sex group, and under OPM's regulations, must generally use the higher of the two percentages in making each underrepresentation determination".

OPM Attachment 1 to FPM Letter 720-2 states that "It is important to recognize that determinations of underrepresentation made in support of FEORP are based on civilian labor data without regard to the availability of minorities and women in the labor force identified as having (or potentially having) the skills needed to perform in various occupations and pay grades".

**Department of Health and Human Services (DHHS) Career Opportunity Training Agreement (COTA)**

DHHS COTA states that "Selection Method: Through the use of the Department of Health and Human Services Training Agreement for Career Opportunities, employees who do not meet the basic qualification requirements, as stated in the X-118 Qualification Standards, will be given the opportunity to be competitively selected for the above position."

**29 C.F.R. 1614.108 Investigation of Complaints**

(a) The investigation of complaints shall be conducted by the agency against which the complaint has been filed.

(b) In accordance with instructions contained in Commission Management Directives, the agency shall develop a complete and impartial factual record upon which to make findings on the matters raised by the written complaint. Agencies may use an exchange of letters or memoranda, interrogatories, investigations, fact finding conferences or any other fact finding methods that efficiently and thoroughly address the matters at issue. Agencies are encouraged to incorporate alternative dispute resolution techniques into their investigative efforts in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c) (1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the agency, and any employee of the Federal agency shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation, or alternatively by written statement under penalty of perjury.

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the decision maker should, or the Commission on appeal may, in appropriate circumstances:

(i) draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(d) Any investigation will be conducted by investigators with appropriate security clearances. The Commission may, upon request, supply the agency with the name of an investigator with appropriate security clearances.

(e) The agency shall complete its

investigations within 180 days of the date of filing of an individual complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to § 1614.107. By written agreement within those time periods, the complainant and the respondent agency may voluntarily extend the time period for not more than an additional 90 days. The agency may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Exec. Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the investigating agency notifies the parties of the extension.

(f), Within 180 days from the filing of the complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the agency shall notify the complainant that the investigation has been completed, shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing before an administrative judge or may receive an immediate final decision pursuant to section

1614.110 from the agency with which the complaint was filed. In the absence of the required notice, the complainant may request a hearing at any time after 180 days has elapsed from the filing of the complaint.

**APPENDIX D**

In re HALLIBURTON COMPANY, Petitioner.
Misc. No. 371.
United States Court of Appeals, Federal Circuit.
March 12, 1993.
S.D. Tex.
VACATED.

Before ARCHER, Circuit Judge, BENNETT, Senior Circuit Judge, and MICHEL, Circuit Judge.
ON PETITION FOR WRIT OF MANDAMUS.

MICHEL, Circuit Judge.
ORDER
1 Halliburton Company petitions for a writ of mandamus directing the United States District Court for the Southern District of Texas to vacate its March 4, 1993 order. Louis J. Wardlaw, III and Joe A. Young oppose.

This matter stems from Wardlaw and Young's patent infringement suit against Halliburton. Following a jury trial, the jury returned a verdict that Wardlaw and Young's patent was not invalid, and Halliburton infringed certain claims of the patent, and that the infringement was willful. The court awarded treble damages and attorney fees and judgment was entered on February 26, 1993.

Halliburton filed a Fed.R.Civ.P. 59(e)

motion to alter or amend the judgment. Halliburton states that it intended to file additional post judgment motions also. The time limit for any party to file any post-judgment motions also. The time limit for any party to file any post judgment-motions is March 15, 1993. On March 4, 1993, the district court denied Halliburton's R. 59(e) motion and further ordered that:

"No party in this case file anything further before this Court. The Court will not grant, and is not interested in considering motions to amend judgment, motions for judgment notwithstanding the verdict, motions for a new trial, or any other sorts of motions. The Court is in complete agreement with the substance of the jury verdict, and has ruled regarding all remaining issues in the case. The cost issue has been resolved. This Court must now turn its attention to the some 550 other civil disputes, and more than 40 criminal cases, presently pending on one of the largest dockets in the Country. None of the foregoing filings are required for proper appellate scrutiny, and the filing of anything further in this Court, in the absence of the exhaustion of such appellate scrutiny, will constitute an act of contempt, for which appropriate sanctions will issue."

As Halliburton points out, the Federal Rules of Civil Procedure permit any party to file timely post-judgment motions. Further,

this court has stated that the failure to file certain post-judgment motions will result in limited appellate review. *Biodex Corp. v. Loredan Biomedical, Inc.*, 946 F.2d 850, 862 (Fed.Cir. 1992)("Biodex's failure to present the district court with a post-verdict motion precluded appellate review of the sufficiency of the evidence.") Wardlaw and Young's argument that Halliburton filed a lengthy addendum to its proposed judgment does not negate Halliburton's right to file any post-judgment motions authorized by; the rules.

Mandamus has traditionally been used to confine a trial court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. *Gulfstream Aerospace Corp. v. Mayacamas*, 485 U.S. 271, 289 (1988). For example, mandamus has been granted to compel a district court to accept the filing of a motion to extend the time to appeal, *Merritt v. Broglin*, 841 F.2d 184 (7th Cir. 1988), to compel a district court to consider a motion for leave to amend an answer to a complaint, *Richardson Greenshields Securities, Inc. v. Lau*, 825 F.2d 647 (2d Cir. 1987), and to vacate an order denying both sides right to employ preemptory challenges, *Maloney v. Plunkett*, 854 F.2d 152 (7th Cir. 1988).

2 In *Richardson*, the Second Circuit stated that absent extraordinary circumstances, "a

[district] court has no power to prevent a party from filing pleadings, motions, or appeals authorized by the Federal Rules of Civil Procedure." *Richardson*, 825 F.2d at 652. We are in agreement with this principle. Accordingly,

IT IS ORDERED THAT:

Halliburton's petition is granted. The district court's order is vacated and the district court is directed to allow the filing of motions authorized by the Federal Rules of Civil Procedure.

C.A.Fed.(Tex.), 1993.

In re Halliburton Co.

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